IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.404 OF 2003
JUDGE'S SUMMONS NO. OF 2000
IN
COMPANY PETITION NO.134 OF 2000

Simplex Concrete Piles (I) Ltd. ..Petitioners.

Vs.

S.V.C. Superchem Ltd. ..Respondents.

Mr.C.S.Kapadia, Advocate for the Petitioners.

Mr.Atul Damle, Advocate for the Respondents to show cause.

CORAM: S.U.KAMDAR, J.
DATED: 2ND DECEMBER, 2004

P.C. :

The present application is taken out by the Petitioners for appointment of the provisional liquidator of the Respondent Company.

2. According to the Petitioner, there is due and payable by the Company to the Petitioner a sum of Rs.70,00,000/- alongwith interest thereon. Originally, a Company Petition was filed being Company Petition No.32 of 1999 and the parties had arrived at consent terms. There were defaults on the part of the Respondent Company to make payment under the said consent terms. Accordingly, the

Petitioner was compelled to file the subsequent Company Petition being Company Petition No.134 of 2000, that is the present Company Petition.

3. Even in this Petition, the Petitioners and the Respondents have entered into consent terms and there has been defaults in making payments under the consent terms. The last of such terms were entered into on 19.6.2001. According to the Petitioner, there is a default even in respect of the said last consent terms dated 19.6.2001. The Company Petition has now stand admitted in view of the defaults committed by the Respondent Company in making payment of the amount as agreed in the said terms.

4. The Petitioner has taken out the present Judge’s Summons and presented to this Court sometimes in or about 27.3.2000 and an affidavit in support is filed on 24.3.2000. The Petitioner obtained an order of interim injunction from this Court on 28th March, 2000. The Petitioner thereafter did not register the said Judge’s Summons and was consequently remained pending. Ultimately, the Judge’s Summons was registered on 11th September, 2003 that is almost after a period of three years from the date of obtaining the order on 28th March, 2000. The

present Judge’s Summons is numbered as 404 of 2003.

5. I have heard the learned counsel for the Petitioner in support of the Judge’s Summons. The learned counsel for the Petitioner has contended that conduct on the part of the Respondent Company of committing defaults of consent terms executed by and between the parties is itself sufficient to appoint a provisional liquidator. He has further urged before me that there are several consent terms entered into by and between the Petitioner and the Respondent Company and, therefore, this Court should appoint a provisional liquidator. In so far as this contention is raised, I am of the opinion that though no doubt that there are defaults on the part of the Respondent Company to comply with its obligation under the consent terms and because of the same the Petition is already admitted and pending. It is by itself is no ground for appointment of provisional liquidator.

6. The Company is a running concern today. Several workers work in the said Company. In my view, therefore, it is not appropriate case for appointment of the provisional liquidator in the absence of any serious ground.

7. The learned counsel for the Petitioner has thereafter subsequently contended before me that

sometime in or about 2000 a Newspaper report appeared in the Economic Times inter-alia stating that the Company is likely to dispose of Mathura PTA Plant and Machinery and further contended that in the affidavit in reply filed to the present Judge's Summons, the Company has admitted that they are in the process of restructuring. On the basis of the aforesaid, it is contended that in the process of restructuring there is a likelihood that some of the assets may be disposed of and in view thereof, the learned counsel pressed the appointment of the provisional liquidator.

8. I am not satisfied with the ground that is made out for appointment of a provisional liquidator. For the appointment of a provisional liquidator, it is necessary that a serious ground of flittering of assets of the Company should be made out. There is no material indicatig any such eventualities. I am of the opinion that the circumstances required for appointment of a provisional liquidator are not made out in the present case. I am further of the

opinion that the Petitioner's conduct in obtaining the order of injunction dated 28th March, 2000 and thereafter not to register the Judge's Summons calls for an adverse comments. In view thereof, I am not

inclined to pass any order in the Judge's Summons. Judge's Summons is therefore dismissed. There shall be no order as to costs.